SOUTHERN DISTRICT OF NEW YORK	V	
JOHN CURTIS RICE,	X : :	
,	: :	10 CV 447 (D FF)
Plaintiff,	: :	19-CV-447 (JMF)
-V-	:	<u>ORDER</u>
NBCUNIVERSAL MEDIA, LLC,	:	
Defendant.	: :	
	: X	

JESSE M. FURMAN, United States District Judge:

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Plaintiff filed this complaint pursuant to the Copyright Act, 17 U.S.C. § 101 *et seq.*, on January 16, 2019. *See* Docket No. 1. The complaint alleges that Defendant infringed on Plaintiff's copyright by displaying Plaintiff's photograph on one of its websites. *See id.* Defendant's position is that it did not infringe Plaintiff's copyright because it had a license for online use of Plaintiff's photograph. *See, e.g.*, Docket No. 16.

On January 17, 2019, the Court ordered that the parties appear for an initial conference and that the parties conduct a mediation session prior to the initial conference. *See* Docket Nos. 6, 7. On April 1, 2019, the Court-annexed Mediation Program closed the mediation referral because "one or both parties failed, refused to attend, or refused to participate in the mediation." Docket No. 14. Defendant explained that this closure was because "Defendant indicated that it was willing to participate in mediation and provided available dates to the mediation office, but Plaintiff did not." Docket No. 16. As of the initial conference, no mediation session was held, in violation of the Court's January 17 Order.

Additionally, on May 1, 2019, after first seeking to reschedule the May 2, 2019 conference less than 48 hours in advance of the conference, *see* Docket No. 18; *cf.* Individual

Rules and Practices in Civil Cases 1(E), only a few hours later, Plaintiff's counsel then sought to cancel the conference in light of Plaintiff's dismissal of the case, *see* Docket Nos. 20, 21. The Court denied the last-minute request to cancel the conference, *see* Docket No. 22, but Plaintiff's counsel failed to appear at the conference.

At the May 2 conference, which was held on the record, Defendant represented that, early in the case, it provided evidence of its license, *see also* Docket No. 16, and asked Plaintiff's counsel to dismiss the case. Defendant represented that Plaintiff's counsel persisted in seeking a settlement despite the license. It appears that Plaintiff's counsel agreed to dismiss the case only after it became clear that Defendant would not settle prior to the parties' initial appearance in Court. *See also* Docket No. 20 (Voluntary dismissal filed at 11:09 p.m. on May 1, 2019).

Accordingly, Plaintiff's counsel is ordered to show cause in writing, by May 9, 2019, why sanctions should not be imposed — pursuant to Rules 11 and 16 of the Federal Rules of Civil Procedure and/or the Court's inherent authority — for filing a meritless lawsuit; for continuing to prosecute that lawsuit even after being presented with evidence of its lack of merit; for failure to comply with this Court's orders; and for failure to appear as directed at the conference earlier today. Defendant shall file any response, including any and all billing records and evidence of costs incurred as a result of this litigation, by May 16, 2019.

SO ORDERED.

Dated: May 2, 2019

New York, New York

ESSE M. PURMAN

United States District Judge